HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION Nos.24569, 24160, 24431, 24432, 24434, 24436, 24437, 24439 and 24441 of 2006

Dated:27.11.2006

Between:

Kandagadda Venkateswarlu.

…Petitioner

and

The Sub-Collector and another.

…Respondents

HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION Nos.24569, 24160, 24431, 24432, 24434, 24436, 24437, 24439 and 24441 of 2006

COMMON ORDER:

In all these Writ Petitions the notice issued by the second respondent purportedly under Section 7 of the Andhra Pradesh Land Encroachment Act, 1905 (for short 'the Act'), is assailed as illegal and vague.

All the petitioners allegedly purchased an extent of 7 to 12 Ankanams (1 Ankanam in legal parlance is equivalent to 8 square yards) under registered sale deeds from Sk.Jani Basha and others. They raised thatched huts. They also allege that the vendors of the petitioners were granted the land on payment of market value. The second respondent issued the impugned notices calling upon all the petitioners to remove the encroachment on the Government land. The transliteration of the notice, dated 11.11.2006, issued to the petitioner in W.P.No.24569 of 2006 reads as under.

R.C.A.No.72 of 2006 MRO Office

Gudur Dt.11.11.2006.

Notice U/Sec.7 of the Land Encroachment Act, 1905

Notice is hereby given that you Vis.Kandagaddala Venkateswarlu encroached Govt.Land i.e., R & B land of an extent of 7 Ankanams Field No.K.No.0/2 to 0/4 bounded East: Plot No.10; South Plot No.14; North road West Plot No.12 and constructed house and shop without any permission. Your occupation of the said land is causing obstruction to the vehicular Traffic and Pedestrians. Therefore, you are directed to show cause why you are not be evicted and the building and the material in the shop shall not be handed over to the Govt. within the 15 days.

Sd/-

Mandal Revenue Officer,

Gudur.

In all other Writ Petitions a similar notice is issued. It is the contention of the petitioners as well as the learned Counsel appearing for them that when clearly delineated property was purchased by the petitioners, calling upon the petitioners to vacate the land without specifying the area allegedly occupied by the petitioners is illegal and arbitrary. It appears they also approached the Mandal Revenue Officer by making representations on 23.11.2006 requesting to give the details of the Government land, which is allegedly encroached upon by the petitioners. Learned Assistant Government Pleader after obtaining instructions submits that though the impugned notices do not specify the area occupied by each of the petitioners, there are clear indications regarding the Government land under their occupation, and therefore, there is no vagueness in the impugned notices. He nextly contends that on the ground that notice is vague, no interference is called for as the matter is still pending before the Mandal Revenue Officer, and that even if an order is passed by the Mandal Revenue Officer under Section 6 of the Act, the petitioners have an effective remedy under Section 10 of the Act.

Section 6 of the Act contains the procedure for evicting the unauthorized occupant of the Government land. Such procedure must commence with serving of notice under Section 7 of the Act. Section 7 of the Act obligates the Mandal Revenue Officer to issue a notice specifying the land occupied by the alleged encroacher. The Act or the Andhra Pradesh Land Encroachment Rules, 1976, do not indicate any specific Form in which a notice under Section 7 of the Act should be served. However, Board Standing Order (BSO) 26, which deals with unauthorized occupation of the Government land by para 3 requires the Mandal Revenue Officer to serve a notice under Section 7 of the Act as per Appendix-XXXII. The Form of notice under Section 7 of the Act in Appendix-XXXII of BSO 26 reads as under.

To

residing in village, taluk.

Whereas you are reported to be unauthorized occupation of the land specified in the schedule below, which is the property of Government, you are hereby given notice that if you so desire you may, before 19 , show cause either in person or in writing before ***me/the Collector*** why you should not in addition to the full assessment on the land under Section (3) (i) of the Act to the rate prescribed by or under Section (3) (ii) of the Act be charged a penalty for such occupation under Section 5 of Act III of 1905 **and/or** be subjected to eviction from the land and forfeiture of the crops, products, building, constructions and things deposited thereon under Section 6 of the said Act.

SCHEDULE

Village Survey Description Entire Occupied Nature of

number and of land extent. Extent. Occupation.

Sub-division Acs.Cts. Acs.Cts.

The BSOs do not always have statutory colour. They are still binding. The Mandal Revenue Officer, however, issued the impugned notices ignoring para 3 of BSO 26. Therefore, the impugned notices are unsustainable. As the impugned notices suffers from lack of basic requirement as per law, this Court is not able to countenance the submission of the learned Assistant Government Pleader that in response to the representation made by the petitioners, the Mandal Revenue Officer will issue additional notices which would cure the defect. In the case on hand, whether defect pointed out is a curable defect or not is not of much relevance, especially, when the notices issued under Section 7 of the Act does not specify the area allegedly encroached upon or occupied by each of the petitioners, as required under relevant BSO. On this reason alone, the impugned notices are unsustainable. This does not, however, preclude the Mandal Revenue Officer to issue fresh notices to the petitioners, obtain their explanations and pass appropriate orders under Section 6 of the Act. It is alleged that the petitioners have occupied the Government land on both sides of Gudur-Rajampet Road. Therefore, it shall be open to the Mandal Revenue Officer to take up the exercise as indicated hereinabove, and complete the same within a period of eight weeks from the date of receipt of a copy of this order.

The impugned notices are accordingly set aside, and the Writ Petitions are disposed of with the above observations and directions. No costs.

(V.V.S.RAO, J)

27.11.2006

Note: Issue C.C by 29.11.2006.

B/o.

vs